

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GERALDINE DANIELLE HAWTHORNE	:	CIVIL ACTION
	:	
v.	:	
	:	
KINTOCK GROUP &	:	
TYRONE JENNINGS	:	NO. 99-3763

MEMORANDUM AND ORDER

HUTTON, J.

February 14, 2000

Presently before the Court are Defendant Kintock Group's ("Kintock") Motion to Dismiss Counts III and VI of Plaintiff's Complaint (Docket No. 2) and Plaintiff Geraldine Danielle Hawthorne's ("Plaintiff" or "Hawthorne") response thereto (Docket No. 4). For the reason stated below, Kintock's Motion is GRANTED.

I. BACKGROUND

Accepting as true the facts alleged in the Complaint and all reasonable inferences that can be drawn from them, the pertinent facts of this case are as follows. Plaintiff, a former inmate, resided in a halfway house operated by Kintock. The halfway house prepared convicted persons such as Plaintiff for release into society. Defendant Tyrone Jennings ("Jennings") was employed by Kintock and worked at the halfway house at which Plaintiff resided. During the last several weeks that Plaintiff resided at Kintock's halfway house, Jennings was the Director of the "Pre-Release Program."

Over a period of time spanning the last weeks of August 1997 until September 6, 1997, Jennings sexually assaulted Plaintiff on four occasions. Jennings threatened Plaintiff with further incarceration if she failed to submit to his demands for sex. Sexual acts were to be the currency with which Plaintiff would pay Jennings to ignore her curfew violations. Jennings made his last demand of Plaintiff the day before she was released from the halfway house.

Plaintiff filed the instant matter in the Court of Common Pleas of Philadelphia County and Kintock removed Plaintiff's case to federal court. The Complaint states six causes of action under federal and Pennsylvania law. Kintock seeks dismissal of Count III, "Pennsylvania Constitution - Rights Amendment," and Count VI, "Federal Civil Rights, 42 U.S.C § 1983, 5, 6."

II. LEGAL STANDARD

When considering a motion to dismiss a complaint for failure to state a claim under Rule 12(b)(6),¹ this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule

¹. Rule 12(b)(6) provides that:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). A court will only dismiss a complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). Nevertheless, a court need not credit a plaintiff's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997).

III. DISCUSSION

A. Plaintiff's "Pennsylvania Constitution - Rights Amendment," Claim

The Equal Rights Amendment ("ERA") of the Pennsylvania Constitution states as follows: "Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual." Pa. Const. art. I, § 28. Plaintiff claims that her rights under the ERA were violated by Kintock and Jennings (collectively, the "Defendants") because they failed to provide a

safe place of detention, free from Quid Pro Quo Sexual Harassment . . . failed to respond promptly to [her] complaints of Quid Pro Quo Sexual Harassment . . . failed to investigate throughly and in a timely manner [her] complaints of Quid Pro Quo Sexual Harassment . . . failed to disseminate [sic] an anti sexual harassment policy to management staff and employees thereby exhibiting a deliberate indifference to [her] protected rights.

(Compl. at ¶ 17). Plaintiff alleges that Defendants engaged in these discriminatory actions with malice and/or reckless indifference to her civil rights as "protected by the Pennsylvania Constitution," and that said conduct denied her "civil rights guaranteed by the Pennsylvania Constitution." (Compl. at ¶¶ 18-19).

Kintock argues that whether males and females were treated differently under the law is not dispositive. Instead, Kintock contends that Plaintiff's allegations concern illegal conduct that occurred between two individuals "within [a] prison facility," and that such allegations are beyond the ambit of the ERA.

In Henderson v. Henderson, 458 Pa. 97, 327 A.2d 60 (1974), the Pennsylvania Supreme Court stated as follows:

The thrust of the [Pennsylvania Constitution's] Equal Rights Amendment is to insure equality of rights under the law and to eliminate sex as a basis for distinction. The sex of citizens of this Commonwealth is no longer a permissible factor in the determination of their legal rights and legal responsibilities. The law will not impose different benefits or different burdens upon the members of a society based on the fact that they may be man or woman.

Id. at 101, 327 A.2d at 62. In Commonwealth v. Butler, 458 Pa. 289, 328 A.2d 851 (1974), the Pennsylvania Supreme Court, after

considering the purpose and scope of the Pennsylvania Equal Rights Amendment stated that "[i]n this Commonwealth, sex may no longer be accepted as an exclusive classifying tool." Id. at 296, 328 A.2d at 855 (citations omitted).

Consideration of the ERA's plain text and the case law that interprets the ERA indicates that the ERA does not encompass a claim such as that brought by Plaintiff. The ERA prohibits denial or abridgments of equality of rights base on gender; it does not provide constitutional protection against conduct like that considered herein. While the ERA does not embrace claims of sexual harassment or unlawful sexual conduct among individuals, such conduct is remediable under tort and criminal law. Ultimately, as Plaintiff alleges that Defendants engaged in tortuous conduct and as tort law provides remedies for such conduct, the Court dismisses Plaintiff's ERA claim.

B. Plaintiff's "Federal Civil Rights, 42 U.S.C § 1983, 5, 6" Claim

Section 1983 provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For

the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983 (emphasis added). While § 1983 is not itself a source of substantive rights, see Baker v. McCollan, 443 U.S. 137 144 n.3, 99 S. Ct. 2689, 2694-95 n.3 (1979), the section provides a remedy for violations of constitutional rights where the alleged violation was committed by a person acting under the color of state law. See Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995). To make out a cause of action under § 1983, a plaintiff must show that: (1) the defendant/person acted under color of law; and (2) the defendant/person's actions deprived plaintiff of rights secured by the Constitution or federal statutes. See Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir. 1993).

Plaintiff contends that the "tortuous" acts described in her Complaint (i.e., "conspiracy to interfere with her civil rights[,]. . . negligence to prevent a denial of her civil rights[,]. . . excessive, unreasonable and unjustified force against her person." (Compl. at ¶ 31)) violated her rights under the Fourth and Fourteenth amendments, that Kintock's "actions were actions under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of the Commonwealth of Pennsylvania and/or the federal government." (Compl. at ¶¶ 29-30).

Generally, the Eleventh Amendment shields the Commonwealth from suit in federal court. The Supreme Court held that Congress

did not abrogate the Eleventh Amendment in enacting § 1983. See Will v. Michigan Dept of State Police, 491 U.S. 58, 70-71, 109 S. Ct. 2304, 2312 (1989) (stating that a state is not a "person" subject to § 1983 liability and that the nonperson status extends to governmental entities that are considered arms of the state for Eleventh Amendment purposes); Quern v. Jordan, 440 U.S. 332, 345, 99 S. Ct. 1139 (1979) (holding that the statute itself does not include explicit and clear language doing so, nor does its history indicate that intent). Therefore, the Commonwealth is not a "person" under § 1983 and cannot be found liable thereunder. Similarly, pursuant to the analysis employed by the Will Court, the Commonwealth also is not liable under § 1985. See Will, 491 U.S. at 70-71, 109 S. Ct. at 2312; Rode v. Dellarciprete, 617 F. Supp. 721, 723 (M.D. Pa. 1985) aff'd in relevant part 845 F.2d 1195 (3d Cir. 1988); see also Brown v. Composite State Board of Med. Exam., 960 F. Supp 301, 304 (M.D. Ga. 1997). The Eleventh Amendment thus bars §§ 1983 and 1985 suits against the Commonwealth and Commonwealth officials. Finally, because a § 1986 claim is dependent on the existence of a cognizable § 1985 claim see Clark v. Clabaugh 20 F.3d 1290, 1295 n.5 (3d Cir. 1994), Plaintiff's § 1986 cannot survive in light of the Court's inability to consider her § 1985 claim. Therefore, as Plaintiff states that the policy or custom pursuant to which Jennings allegedly violated her constitutional rights was promulgated by the Commonwealth or the

federal government, Plaintiff's claims under §§ 1983, 1985, and 1986 must fail.

C. Plaintiff's State Law Claims

Plaintiff asserts claims under Pennsylvania law. This Court has supplemental jurisdiction over Plaintiff's Pennsylvania law claims pursuant to 28 U.S.C. § 1367 which provides in pertinent part as follows: "[D]istrict courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy" 28 U.S.C. § 1367(a) (1999). Section 1367 therefore enables this Court to hear State law claims over which it otherwise has no independent basis for jurisdiction.

At this juncture, however, the Court is compelled to evaluate whether it possesses jurisdiction over Plaintiff's remaining causes of action. In light of the foregoing analysis, the Court now lacks original jurisdiction over the instant lawsuit. A federal court may sua sponte remand if the court determines, inter alia, that it lacks federal subject matter jurisdiction. See 28 U.S.C. § 1447(c); see also Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995)(court must remand if at any time it appears to lack subject matter jurisdiction). Accordingly, the Court remands the instant matter as Plaintiff's federal questions have been resolved, thereby divesting the Court of jurisdiction.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GERALDINE DANIELLE HAWTHORNE	:	CIVIL ACTION
	:	
v.	:	
	:	
KINTOCK GROUP &	:	
TYRONE JENNINGS	:	NO. 99-3763

O R D E R

AND NOW, this 14th day of February, 2000, upon consideration of Defendant Kintock Group's Motion to Dismiss Counts III and VI of Plaintiff's Complaint (Docket No. 2) and Plaintiff Geraldine Danielle Hawthorne's response thereto (Docket No. 4), IT IS HEREBY ORDERED that Defendant Kintock Group's Motion is **GRANTED**.

IT IS FURTHER ORDERED that the instant lawsuit is **REMANDED** to the courts of the Commonwealth of Pennsylvania.

BY THE COURT:

HERBERT J. HUTTON, J.